

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KATHLEEN D. CLANCY and
RICHARD M. CLANCY,

Plaintiffs,

v.

ORDER
04-CV-1018

ZIMMER, INC. AND CARDINAL HEALTH
200, INC.,

Defendants.

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1). Plaintiffs filed: (1) a motion to remand the products liability action against defendants Cardinal Health 200, Inc. ("Cardinal") and Zimmer, Inc. ("Zimmer"), to New York State Supreme Court, County of Erie ("State Court"); and (2) a motion to join Dr. Wierzbieniec, Northtowns Orthopedics, P.C. and Kaleida Health, d/b/a/ Millard Fillmore Suburban Hospital as additional defendants and to remand this matter to State Court. Defendant Cardinal moved for summary judgment. Defendant Zimmer moved for product identification discovery and extension of time to respond to defendant Cardinal's motion for summary judgment.

On February 8, 2007, Magistrate Judge Schroeder filed a Report and Recommendation, recommending that: (1) plaintiffs' motion to remand be denied;

(2) plaintiff's motion to join Dr. Wierzbieniec, Northtowns Orthopedics, and Kaleida Health as defendants be granted; (3) the case be remanded to State Court pursuant to 28 U.S.C. § 1447(e); and (4) Cardinal's motion for summary judgment be denied, without prejudice, to renewing it in State Court.

Defendants filed objections to the Report and Recommendation on February 23, 2007. Oral argument on the objections was held on March 29, 2007.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a de novo determination of those portions of the Report and Recommendation to which objections have been made. Upon a de novo review of the Report and Recommendation, and after reviewing the submissions and hearing argument from the parties, the Court adopts the proposed findings of the Report and Recommendation.

Accordingly, for the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, the Court: (1) denies plaintiffs' motion to remand; (2) grants plaintiff's motion to join Dr. Wierzbieniec, Northtowns Orthopedics, and Kaleida Health as defendants; (3) remands this case to State Court pursuant to 28 U.S.C. § 1447(e); and (4) denies, without prejudice, Cardinal's motion for summary judgment.

The Clerk of Court is directed to take all steps necessary to close the case.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: March 30 , 2007